

APPEAL NO. 031921
FILED AUGUST 26, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 17, 2003. The hearing officer determined that the respondent (carrier) did not waive its right to dispute compensability of the claimed injury pursuant to Section 409.021; that the appellant (claimant) did not sustain a compensable injury on _____; and that since there is no _____, compensable injury, there can be no disability. The claimant appealed on sufficiency of the evidence grounds. The carrier responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the carrier did not waive its right to dispute compensability of the claimed injury pursuant to Section 409.021. The parties stipulated that the carrier received its first written notice of the claimed injury on _____, and that the carrier disputed compensability on October 14, 2002. The hearing officer, without objection from either party, took official notice that October 6 and October 13, 2002, were Sundays. Because the seventh day to contest compensability fell on a Sunday, the carrier had until Monday, October 14, 2002, to timely file its dispute of the claimed injury. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.3(a)(3) (Rule 102.3(a)(3), Texas Workers' Compensation Commission Appeal No. 962596, decided March 27, 1997.

The claimant had the burden to prove that she was injured in the course and scope of her employment. The hearing officer determined that the claimant was not credible. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by medical evidence where the credibility of that evidence is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. Our review of the record reveals that the hearing officer's injury determination is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb the determination that the claimant did not sustain a compensable injury on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge